



7020-02

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-1000

Certain Motorized Self-Balancing Vehicles

Commission Determination to Review-in-Part an Initial Determination Finding No Violation of Section 337; On Review, to Vacate One Portion of the Initial Determination and Take No Position on One Issue; and Affirmance of the Finding of No Violation and Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part a final initial determination (“ID”) of the presiding administrative law judge (“ALJ”) finding no violation of section 337. On review, the Commission has determined to vacate one portion of the ID and to take no position with respect to one issue. The Commission has also determined to affirm the ID’s finding of no violation of section 337 and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket

(EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 26, 2016, based on a complaint filed on behalf of Razor USA LLC of Cerritos, California; and Inventist, Inc. and Shane Chen, both of Camas, Washington. 81 FR 33548-49. The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of U.S. Patent No. 8,738,278 ("the '278 patent"). The complaint further alleged violations of section 337 based upon false advertising, misrepresentation, and unfair competition, the threat or effect of which is to destroy or substantially injure an industry in the United States or to prevent the establishment of such an industry. The Commission's notice of investigation named the following twenty-eight respondents: Contixo Co. of Ontario, California and ZTO Store a.k.a. ZTO Trading, Inc. of Monterey Park, California (collectively, "Contixo"); Joy Hoverboard a/k/a Huizhou Aoge Enterprise Co. Ltd ("Joy Hoverboard") of Huizhou, China; Shenzhen Chenduoxing Electronic Technology Ltd. ("Chenduoxing"), Shareconn International, Inc. ("Shareconn"), and Shenzhen R.M.T. Technology Co., Ltd. ("RMT"); all of Guangdong, China; Cyboard LLC a/k/a Shark Empire Inc. ("Cyboard") of Glendale, California; GyroGlyder.com ("GyroGlyder") of Stockton, California; Soibatian Corporation d.b.a. IO Hawk and d.b.a. Smart Wheels ("Soibatian") of Glendale, California; PhunkeeDuck, Inc. ("PhunkeeDuck") of Floral Park, New York; Shenzhen Jomo Technology Co., Ltd. ("Jomo") of Shenzhen City, China; Shenzhen Kebe Technology Co., Ltd. ("Kebe") and Shenzhen Supersun Technology Co. Ltd., a.k.a. Aottom ("Supersun"), both of Shenzhen, China; Twizzle Hoverboard ("Twizzle") of La Puente, California; Uwheels of Santa

Ana, California; InMotion Entertainment Group LLC (“InMotion”) of Jacksonville, Florida; HoverTech of Hebron, Kentucky; Leray Group a/k/a ShanDao Trading Co., Ltd. (“Leray”) of Beijing, China; Spaceboard USA (“Spaceboard”) of Norcross, Georgia; Genius Technologies a.k.a. Prime Capital (“Genius Technologies”) of Hastings, Minnesota; Hangzhou Chic Intelligent Co., Ltd. (“Chic”) of Hangzhou, China; Swagway, LLC (“Swagway”) of South Bend, Indiana; Modell’s Sporting Goods, Inc. (“Modell’s”) of New York City, New York; Powerboard a.k.a. Optimum Trading Co. (“Powerboard”) of Hebron, Kentucky; United Integral, Inc. dba Skque Products (“Skque”) of Irwindale, California; Alibaba Group Holding Ltd. of Causeway Bay, Hong Kong and Alibaba.com Ltd. of Hangzhou, China (collectively, “Alibaba”); Jetson Electric Bikes LLC (“Jetson”) of New York City, New York; and Newegg, Inc. (“Newegg”) of City of Industry, California. The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *Id.* Eight respondents remain in the investigation, *i.e.*, Chic, Swagway, Modell’s, Powerboard, Skque, Alibaba, Jetson, and Newegg (collectively, “respondents”). Every other respondent was terminated from the investigation based on a consent order stipulation and proposed consent order or good cause, or was found in default.

On August 10 and November 17, 2016, respectively, the Commission issued notice of its determinations not to review the ALJ’s IDs (Order Nos. 11 and 22) terminating the investigation as to Contixo based on a consent order stipulation and proposed consent order, and as to InMotion based on a consent order stipulation, proposed consent order, and settlement agreement. On October 19 and 27, 2016, respectively, the Commission issued notice of its determinations not to review the ALJ’s IDs (Order Nos. 19 and 20) terminating the investigation as to claim 9 of the ’278 patent and claim 4 of the patent. On September 7, October 11, and

December 13, 2016, respectively, the Commission issued notice of its determinations not to review the ALJ's IDs (Order Nos. 14, 18, and 26) finding respondents GyroGlyder, Soibatian, PhunkeeDuck, Jomo, Kebe, Supersun, Twizzle, and Uwheels in default, respondents Joy Hoverboard, Chenduoxing, Shareconn, RMT, and Cyboard in default, and respondents HoverTech, Leray, and Spaceboard in default, respectively. On January 17, 2017, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 27) terminating the investigation as to Genius Technologies for good cause. On February 15, 2017, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 42) granting complainants' unopposed motion to terminate the investigation as to their Lanham Act, common law, and state unfair and deceptive trade practices allegations under section 337(a)(1)(A).

On May 26, 2017, the ALJ issued his final ID and recommended determination ("RD") on remedy and bonding. The ID finds that Alibaba is not an agent of the other respondents and therefore is not within the jurisdiction of section 337. It also finds that none of the respondents' accused products infringe the '278 patent, but that all of the defaulting respondents' accused products infringe the asserted patent based on taking the allegations in the complaint as true. The ID also finds that the technical prong of the domestic industry requirement was not satisfied with respect to the '278 patent. The cover page of the ID/RD, however, states that a violation of section 337 was found, page 75 of the ID/RD states that a violation was found as to the defaulting respondents, and the separately issued "Notice Regarding Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond" (May 26, 2017) ("Notice Regarding the ID") states that a violation of section 337 was found. On June 5,

2017, the ALJ issued an erratum clarifying that there was no violation of section 337 because complainants had not satisfied the technical prong of the domestic industry requirement. He also issued a corrected ID/RD and Notice Regarding the ID on June 5, 2017; however, the error on page 75 of the ID/RD was not corrected. The Commission clarifies that the erratum also applies to (1) page 75 of the ID/RD and corrects that page to delete the statement that a violation has been found as to the defaulting respondents; and (2) footnote 47 on the same page, and corrects the footnote by striking “infringe the ’278 patent” and substituting “violate section 337”.

On June 12, 2017, OUII, complainants, respondent Chic, and a group of three respondents (Swagway, Modell’s, and Newegg) filed separate petitions for review of the final ID. On June 20, 2017, OUII, complainants, respondent Jetson, respondent Alibaba, and a group of four respondents (Swagway, Modell’s, Chic, and Newegg) filed separate responses to the opposing petitions.

Having examined the record of this investigation, including the ID, the parties’ petitions for review, and the responses thereto, the Commission has determined to review-in-part the final ID. Specifically, the Commission has determined to review (1) the ID’s finding that the Commission has no jurisdiction over Alibaba; and (2) the ID’s analysis regarding infringement by the defaulting respondents. The Commission has determined not to review the remainder of the final ID.

On review with respect to issue (1), the Commission determines to take no position on the ID’s finding that the Commission has no jurisdiction over Alibaba. On review with respect to issue (2), the Commission vacates the ID’s findings in the last paragraph on page 39 (and paragraph 5 on page 72, as well as the first sentence on page 83) that complainants have

established that the defaulting respondents infringe the '278 patent. These respondents have been found in default by virtue of their failure to respond to the complaint and notice of investigation. *See* Comm'n Notice (September 7, 2016); Comm'n Notice (October 11, 2016); Comm'n Notice (December 13, 2016). Section 337(g)(1), 19 U.S.C. 1337(g)(1), provides the conditions and procedures applicable for issuing a default remedy. In light of the Commission's determination not to review the remainder of the final ID, including but not limited to the finding that the technical prong of the domestic industry requirement for the '278 patent has not been satisfied, the analysis under Section 337(g)(1) is moot.

The Commission therefore affirms the ID's finding of no violation of section 337 and terminates the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

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